

NEWSSTAND

Healthcare Update: Healthcare News from Capital Hill and The Department of Health and Human Services

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In response to the Centers for Medicare and Medicaid Services' (CMS') proposed hospital inpatient rule for FY 2011, lawmakers urged the agency to reconsider payment reductions in a July 12 letter. The following week, the agency released its proposed rules for home health and skilled nursing facilities. In other news, the Department of Health and Human Services (HHS) issued final rules for achieving "meaningful use" of electronic health records.

LAWMAKERS URGE CMS TO HALT HOSPITAL CUTS:

In an effort to convince CMS to reconsider its proposed Medicare inpatient hospital payment reductions due to documentation and coding practice changes, 242 House Members sent a letter to the agency's newly-installed Administrator, Donald Berwick, on July 12. In their letter, lawmakers cited the proposed 2.9 percent cut in reimbursements that CMS claimed would eliminate the effect of coding changes not related to the severity of a patient's illness.

The bipartisan group of House Members continue by urging the agency "to re-examine this issue and mitigate these reductions in payment," emphasizing the negative impact that the cuts – which would amount to \$3.7 billion – would have on hospitals in both urban and rural communities nationwide. Their concerns echo those expressed by the American Hospital Association and the Federation of American Hospitals in June.

CMS is expected to issue a final FY 2011 inpatient hospital rule by early August.

PROPOSED CHANGES FOR HOME HEALTH & SKILLED NURSING FACILITIES:

On July 16, CMS issued a proposed rule that would amount to a \$900 million reduction to home health agencies. A combination of the annual market basket update and payment provisions mandated by the new healthcare reform law (Public Law 111-148), these proposed cuts would represent a 4.75 percent decrease in reimbursements to home health agencies in calendar year 2011.

On the same day, CMS also released its notice of payment rates for skilled nursing facilities in FY 2011, in which reimbursement rates would increase by a total of \$542 million – or 1.7 percent. In addition, the agency's notice also cited a delay in the implementation of a provision

in the healthcare reform law that changes the Resource Utilization Groups, Version 4 (RUG-IV) case-mix classification system.

Comments on the proposed rules are due in September, with final rules set to be released later this year.

HHS RELEASES FINAL ‘MEANINGFUL USE’ RULES:

Under the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, eligible hospitals and healthcare professionals qualify for Medicare and Medicaid incentive payments when they adopt certified electronic health records (EHR) technology and use it to achieve specified objectives.

On July 13, HHS Secretary Kathleen Sebelius announced two final rules that will help such entities qualify for up to \$27 billion in federal funding. The first regulation defines the “meaningful use” objectives that providers must meet to qualify for the bonus payments. The final rule divides meaningful use objectives into a required group of “core” objectives – 15 for physicians and 14 for hospitals – and a group of “optional” objectives that providers can choose to defer in 2011 and 2012. HHS has referred to this as a “two track” approach, stating that it will guarantee that the basic elements of meaningful use will be met by all providers qualifying for incentive payments, while simultaneously allowing flexibility in other areas to reflect providers’ needs in adopting full use of EHR.

When compared with the proposed rule on meaningful use, the final rule scales back the thresholds that providers must meet. For instance, the final rule includes 44 quality reporting measure requirements, scaled back from 90 measures in the proposed rule. In addition, the final language requires that 40 percent of prescriptions be transmitted electronically during the first stage of EHR adoption, as opposed to the 75 percent threshold in the proposed rule.

The requirements for meaningful use will be implemented over the next several years, and additional measures that will raise quality objectives for EHR will be gradually phased in. By 2015, those not in compliance will face penalties by way of reductions in Medicare reimbursements.

The second regulation identifies the technical capabilities required for certified EHR technology, and is similar to the interim final rule released earlier this year in terms of standard terms to describe clinical problems and procedures, standard formats for prescriptions and requirements for the secure internet transport of such information.

According to HHS, these announcements marked the completion of multiple steps that have laid the groundwork for the incentive payments program. With the final definitions and requirements in place, EHR vendors can ensure that their systems deliver the required capabilities and providers can be assured that the system they use will support achievement of meaningful use objectives.

Both rules will appear in the July 28 Federal Register, with the meaningful use rule taking effect 60 days after publication and the standards and certification rule taking effect 30 days after publication. Organizations representing physicians, hospitals and patients have expressed support for the final rulings.

NEXT STEPS:

We will continue to monitor Congress, CMS and other relevant federal agencies as the implementation of healthcare reform progresses and other healthcare matters arise, and will continue to provide new updates as developments occur.

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Should you have questions on the content of this advisory, or wish to discuss any other healthcare related issue, please contact those listed below or call the Edwards Angell Palmer & Dodge LLP attorney responsible for your affairs.

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